

turtle monitoring program indicate that such measures will ensure that continued operation of the summer flounder fishery is not likely to jeopardize the continued existence of any species listed under the ESA.

(2) The Regional Administrator may reopen the summer flounder fishery in the EEZ, or any part thereof, if the sea turtle monitoring program indicates changed conditions and if projections of the sea turtle monitoring program indicate that NMFS can ensure that continued operation of the summer flounder fishery is not likely to jeopardize the continued existence of any species listed under the ESA.

(f) *Additional sea turtle conservation measures.* (1) The Regional Administrator may impose additional sea turtle conservation measures, including tow-time requirements, in the EEZ, after consultation with the MAFMC, the Director of the State of North Carolina Division of Marine Fisheries, and the marine fisheries agency of any other affected state, by publishing notification in the FEDERAL REGISTER. The Regional Administrator shall take such action if he/she determines further measures are necessary to avoid jeopardizing the continued existence of any species listed under the ESA or if such action would allow reopening of the summer flounder fishery in the EEZ. The determination of the impact on sea turtles must be based on turtle mortalities and projections of turtle mortality by the NMFS monitoring and assessment program.

(2) Consistent with the procedures specified in § 648.10, the Regional Administrator may require that all or a certain portion of the vessels engaged in fishing for summer flounder carry observers, consistent with the requirements of § 648.10, to gather data on incidental capture of sea turtles and to monitor compliance with required conservation measures. This requirement may apply to certain types of vessels, certain areas, or during certain times of the year.

(g) *Experimental projects.* Notwithstanding paragraphs (a) through (f) of this section, the Regional Administrator may authorize summer flounder fishing, as a part of experimental projects to measure turtle capture

rates, to monitor turtle abundance, to test alternative gear or equipment, or for other research purposes. Research must be approved by the Regional Administrator, and it must not be likely to jeopardize the continued existence of any species listed under the ESA. The Regional Administrator will impose such conditions as he/she determines necessary to ensure adequate turtle protection during experimental projects. Individual authorizations may be issued in writing. Authorizations applying to multiple vessels will be published in the FEDERAL REGISTER.

[61 FR 34968, July 3, 1996, as amended at 62 FR 14651, Mar. 27, 1997]

Subpart H—Management Measures for the Scup Fishery

SOURCE: 61 FR 43426, Aug. 23, 1996, unless otherwise noted.

§ 648.120 Catch quotas and other restrictions.

(a) *Annual review.* The Scup Monitoring Committee shall review the following data, subject to availability, on or before August 15 of each year. This review will be conducted to determine the allowable levels of fishing and other restrictions necessary to achieve an exploitation rate of 47 percent in 1997, 1998, and 1999, 33 percent in 2000 and 2001, and 19 percent in 2002 and thereafter: Commercial and recreational catch data; current estimates of fishing mortality; stock status; recent estimates of recruitment; virtual population analysis results; levels of noncompliance by fishermen or individual states; impact of size/mesh regulations; impact of gear on the mortality of scup; and any other relevant information.

(b) *Recommended measures.* Based on this review, the Scup Monitoring Committee shall recommend the following measures to the Demersal Species Committee of the MAFMC and the Commission to assure that the exploitation rate specified in paragraph (a) of this section will not be exceeded:

(1) The commercial quota for each of the three periods specified in paragraph (d)(1) of this section, to be set from a range of 0 to the maximum allowed to

achieve the specified exploitation rate. The commercial quota will be established by estimating the annual total allowable catch (TAC), allocating it into the three periods, and deducting the discard estimates for each period.

(2) Landing limits for the Winter I and Winter II periods.

(3) Percent of landings attained at which the landing limit for the Winter I period will be reduced.

(4) Commercial minimum fish size.

(5) Minimum mesh size.

(6) Recreational possession limit set from a range of 0 to 50 scup to achieve the specified exploitation rate.

(7) Recreational minimum fish size set from a range of 7 inches (17.8 cm) TL to 10 inches (25.4 cm) TL.

(8) Recreational season.

(9) Restrictions on gear.

(10) Season and area closures in the commercial fishery.

(c) *Annual fishing measures.* The Demersal Species Committee shall review the recommendations of the Scup Monitoring Committee. Based on these recommendations and any public comment, the Demersal Species Committee shall recommend to the MAFMC measures necessary to assure that the specified exploitation rate will not be exceeded. The MAFMC shall review these recommendations and, based on these recommendations and any public comment, recommend to the Regional Administrator measures necessary to assure that the specified exploitation rate will not be exceeded. The MAFMC's recommendation must include supporting documentation, as appropriate, concerning the environmental and economic impacts of the recommendations. The Regional Administrator shall review these recommendations and any recommendations of the Commission. After such review, NMFS will publish a proposed rule in the FEDERAL REGISTER by October 15 to implement a commercial quota, specifying the amount of quota allocated to each of the three periods, landing limits for the Winter I and Winter II periods, the percentage of landings attained during the Winter I fishery at which the landing limits will be reduced, a recreational harvest limit and additional management measures for the commercial fishery.

NMFS will publish a proposed rule in the FEDERAL REGISTER by February 15 to implement additional management measures for the recreational fishery, if the Regional Administrator determines that such measures are necessary to assure that the specified exploitation rate will not be exceeded. After considering public comment, NMFS will publish a final rule in the FEDERAL REGISTER to implement the annual measures.

(d) *Distribution of Commercial Quota.*

(1) The annual commercial quota will be allocated into three periods, based on the following percentages:

Period	Percent
Winter I—January–April	45.11
Summer–May–October	38.95
Winter II—November–December	15.94

(2) The Winter I and Winter II commercial quotas will each be distributed to the coastal states from Maine through North Carolina on a coastwide basis.

(3) The Summer commercial quota will be allocated to the coastal states from Maine through North Carolina, based upon the following percentages:

SUMMER PERIOD (MAY–OCTOBER) COMMERCIAL QUOTA SHARES

State	Share (percent)
Maine	0.13042
New Hampshire	0.00004
Massachusetts	15.49120
Rhode Island	60.56589
Connecticut	3.39884
New York	17.05295
New Jersey	3.14307
Delaware	0.00000
Maryland	0.01286
Virginia	0.17789
North Carolina	0.02690
Total	100.00000

(4) All scup landed for sale in any state during either Winter I or Winter II shall be applied against the coastwide commercial quota for that period, regardless of where the scup were harvested. All scup landed for sale in a state during the Summer period shall be applied against that state's summer commercial quota, regardless of where the scup were harvested.

(5) All scup landed for sale in any state during the period January 1, 1997, through April 30, 1997, shall be applied

against the coastwide commercial quota for the 1997 Winter I period, regardless of where the scup were harvested. Any landings during that time in excess of the 1997 Winter I commercial quota will be subtracted from the 1997 Winter II period's allocation. Any overage beyond the 1997 Winter II allocation will be deducted from subsequent winter periods.

(6) Beginning in 1997, any overages of the commercial quota landed in any state during the Summer period will be deducted from that state's Summer period quota for the following year. Beginning in 1998, any overages of the commercial quota landed in any Winter period will be subtracted from the period's allocation for the following year.

(7) Based upon any changes in the landings data available from the states for the base years 1983-92, the Commission and the Council may recommend to the Regional Administrator that the states' shares specified in paragraph (d)(3) of this section and the period allocations specified in paragraph (d)(1) of this section be revised. The Council's and the Commission's recommendation must include supporting documentation, as appropriate, concerning the environmental and economic impacts of the recommendation. The Regional Administrator shall review the recommendation of the Commission and the Council. After such review, NMFS will publish a proposed rule in the FEDERAL REGISTER to implement a revision in the state shares. After considering public comment, NMFS will publish a final rule in the FEDERAL REGISTER to implement the changes in allocation.

(e) *Quota transfers and combinations.* Any state implementing a state commercial quota for scup may request approval from the Regional Administrator to transfer part or all of its Summer period quota to one or more states. Two or more states implementing a state commercial quota for scup may request approval from the Regional Administrator to combine their quotas, or part of their quotas, into an overall regional quota. Requests for transfer or combination of commercial quotas for scup must be made by individual or joint letter(s) signed by the principal state official with marine

fishery management responsibility and expertise, or his or her previously named designee, for each state involved. The letter(s) must certify that all pertinent state requirements have been met and identify the states involved and the amount of quota to be transferred or combined.

(1) Within 10 working days following the receipt of the letter(s) from the states involved, the Regional Administrator shall notify the appropriate state officials of the disposition of the request. In evaluating requests to transfer a quota or combine quotas, the Regional Administrator shall consider whether:

(i) The transfer or combination would preclude the overall Summer period quota from being fully harvested.

(ii) The transfer addresses an unforeseen variation or contingency in the fishery.

(iii) The transfer is consistent with the objectives of the Summer Flounder, Scup, and Black Sea Bass FMP and the Magnuson-Stevens Act.

(2) The transfer of quota or the combination of quotas will be valid only for the Summer period for which the request was made and will be effective upon the filing by NMFS of a notification of approval of the quota transfer or combination with the Office of the Federal Register.

(3) A state may not submit a request to transfer quota or combine quotas if a request to which it is party is pending before the Regional Administrator. A state may submit a new request when it receives notice that the Regional Administrator has disapproved the previous request or when notification of approval of the quota transfer or combination has been filed at the Office of the Federal Register.

(4) If there is a quota overage among states involved in the combination of quotas at the end of the Summer period, the overage will be deducted from the following Summer period's quota for each of the states involved in the combined quota. The deduction will be proportional, based on each state's relative share of the combined quota for the previous Summer period. A transfer of quota or combination of quotas does not alter any state's percentage share of the overall Summer period

quota specified in paragraph (d) of this section.

[61 FR 43426, Aug. 23, 1996, as amended at 62 FR 27984, May 22, 1997]

§ 648.121 Closures.

(a) *Winter closures.* The Regional Administrator will monitor the harvest of commercial quota for each Winter period based on dealer reports, state data, and other available information and shall determine the date when the commercial quota for a Winter period will be harvested. NMFS shall close the EEZ to fishing for scup by commercial vessels for the remainder of the indicated period by publishing notification in the FEDERAL REGISTER advising that, effective upon a specific date, the commercial quota for that period has been harvested, and notifying vessel and dealer permit holders that no commercial quota is available for landing scup for the remainder of the period.

(b) *Summer closure.* The Regional Administrator will monitor the Summer period state commercial quota based on dealer reports, state data, and other available information, and shall determine the date when a state's commercial quota will be harvested. NMFS shall publish notification in the FEDERAL REGISTER advising a state that, effective upon a specific date, its Summer period commercial quota has been harvested and notifying vessel and dealer permit holders that no Summer period commercial quota is available for landing scup in that state for the remainder of the period.

[62 FR 27985, May 22, 1997]

§ 648.122 Season and area restrictions.

If the MAFMC determines through its annual review process that seasonal restrictions or area closures are necessary for the commercial or recreational sectors to assure that the exploitation rate is not exceeded, or to attain other FMP objectives, such measures will be enacted through the procedure specified in § 648.120.

§ 648.123 Gear restrictions.

(a) *Travel vessel gear restrictions—(1) Minimum mesh size.* The owners or operators of other trawlers issued a scup moratorium permit, and that possess

4,000 lb or more (1,814 kg or more) of scup from November 1 through April 30 or 1,000 lb or more (454 kg or more) of scup from May 1 through October 31 must fish with nets that have a minimum mesh size of 4.5 inches (11.43 cm) diamond mesh, applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net, or for codends with less than 75 meshes, the minimum-mesh-size codend must be a minimum of one-third of the net, measured from the terminus of the codend to the head rope, excluding any turtle excluder device extension. Scup on board these vessels shall be stored separately and kept readily available for inspection.

(2) *Mesh-size measurement.* Mesh sizes will be measured according to the procedure specified in § 648.104(a)(2).

(3) *Net modification.* The owner or operator of a fishing vessel subject to the minimum mesh requirement in paragraph (a)(1) of this section shall not use any device, gear, or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chafing gear, on the top of the regulated portion of a trawl net. However, one splitting strap and one bull rope (if present), consisting of line or rope no more than 3 inches (7.2 cm) in diameter, may be used if such splitting strap and/or bull rope does not constrict in any manner the top of the regulated portion of the net, and one rope no greater than 0.75 inches (1.9 cm) in diameter extending the length of the net from the belly to the terminus of the codend along the top, bottom, and each side of the net. "Top of the regulated portion of the net" means the 50 percent of the entire regulated portion of the net that (in a hypothetical situation) will not be in contact with the ocean bottom during a tow if the regulated portion of the net were laid flat on the ocean floor. For the purpose of this paragraph (a)(3), head ropes are not considered part of the top of the regulated portion of a trawl net.

(4) *Mesh obstruction or constriction.* (i) The owner or operator of a fishing vessel subject to the minimum mesh restriction in paragraph (a)(1) of this section shall not use any mesh construction, mesh configuration, or other means on or in the top of the regulated